1955

State of Utah v. Russell E. Richards : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

vs.

RUSSELL E. RICHARDS,
Defendant and Appellant.

Case No. 8279

BRIEF OF RESPONDENT

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STATEMENT OF FACTS

On the night of April 17, 1954, at approximately 9:00 p.m., Mr. and Mrs. Pierre Giraud were visiting Mr. and Mrs. DeMar Hansen. Mrs. Giraud went outside the house and heard the sheep milling around in her husband's corral nearby. She told her husband and Mr.

Hansen that someone or something was in the corral and suggested that they investigate. Mr. Hansen and Mr. Giraud did so. Upon examining the corral, they found the sheep to be at one end of the corral bunched together as though they were frightened. As they proceeded through the corral, they noticed that at the far end of the corral, separated from the other sheep, was one sheep lying on the ground. The two men walked to the other end of the corral and at that point Mr. Giraud saw the defendant lying prostrate on the ground and holding the sheep by one of the hind legs (R. 24). The defendant then released the leg of the sheep and the sheep got up and ran to the other sheep in the corral (R. 25). There were drag marks some 20 to 23 feet in length, ending at the place where the sheep lay, and extending in an "L" shape toward the center of the corral (R. 16). Mr. Hansen, Mr. Giraud and police officers, Bob Williams and Ross G. Frandsen, all testified that they examined these drag marks in the corral (R. 14, 23, 39, 48, 50, 53, 54, 58).

The defendant was charged with attempt to commit grand larceny. The jury, after hearing the evidence, brought in a verdict of guilty.

STATEMENT OF POINTS

POINT I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT A VERDICT OF GUILTY AND THE STATE PRESENTED SUFFICIENT FACTS TO SHOW INTENT OF APPELLANT TO COMMIT GRAND LARCENY.

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ARGUMENT

POINT I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT A VERDICT OF GUILTY AND THE STATE PRESENTED SUFFICIENT FACTS TO SHOW INTENT OF APPELLANT TO COMMIT GRAND LARCENY.

Section 76-1-20, U.C.A. 1953, provides:

> "In every crime or public offense there must exist a union or joint operation of act and intent, or criminal negligence."

Intent is an essential element of a crime or public offense in the State of Utah. *State* v. *Monson,* 210 N.W.

108, 109, 168 Minn. 381, defines intent as follows:

> "Intent in larceny means doing an unlawful act intentionally, that is freely, purposely."

Section 76-1-21, U.C.A. 1953, informs as to the method by which intent may be determined:

> "The intent or intention is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused. * * * "

The implication is that intent is to be determined by the acts of the defendant and other circumstances involved in the evidence. *State* v. *DuBois,* 64 Utah 433, 231 P. 625, holds that the element of intent must be established by the circumstances of the taking or other proof. The Circuit Court of Appeals, Tenth Circuit, in *Loper* v. *U.S.,* 160 Fed. 2d 293 (1947), held:

> "The second contention is that the evidence is insufficient to justify the verdict. Appellant contends that he in good faith believed that the calves were his own and that there was no intent to steal them and that there was no intent to steal them shown by the evidence. It is true that under the law of Utah (U.C.A. 103-36-1) intent is a necessary element of the crime of larceny, and felonious intent to steal the calves was a fact which was necessary to establish by the evidence, since we must look to the law of the place where the property was taken in order to determine

whether it was 'stolen' within the meaning of the act.

There was ample evidence to sustain the verdict. Intent is not always disclosed by what one says, but is determined by what one says and does or fails to say and do in a given situation, together with other facts and circumstances surrounding the transaction."

Appellant contends that the evidence was insufficient to support the verdict on the grounds that the State had not sufficiently proven the intent of the appellant. The jury, after hearing the evidence, were instructed by the Honorable John L. Sevy, Judge of the Seventh Judicial District Court, County of Carbon, as follows:

"INSTRUCTION NO. 5

"You are instructed that before you can find the defendant guilty as charged in the Information, you must find from the evidence beyond a reasonable doubt the following:

* * *

"4. That the defendant Russell E. Richards at said time and place attempted the commission of said larceny with the intent to permanently deprive the said Pierre Giraud of the ownership of said sheep.

"It is not enough that one or more of these elements be proved to your satisfaction beyond a

> reasonable doubt, but all of said elements must be proved from the evidence in the case."

(R. 10)

Thus the jury was charged that unless they found that the attempt included the intent to steal, they were to find the defendant not guilty.

Instruction No. 10, made to the jury, states as follows:

> "In every crime or public offense, there must exist a union or joint operation of act and intent. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused.
>
> "Every sane man is presumed to intend the natural and probable consequences of an act which he intentionally performs. In other words, every person is presumed to intend that which his acts indicate his intentions to have been."

((R.15)

The cases support respondent's contention that intent is to be determined by the acts of the accused as well as by the words of the accused. See *Loper* v. *U.S.*, supra.

A California case where there was a charge against the defendant of assault with intent to commit rape, and the evidence showed that the defendant had enticed a twelve year old girl into a room and proceeded in addi-

tional disguisting manner but decided not to actually commit the crime of rape, and where the defendant plead that the evidence failed to show that defendant made the assault with the intent to commit rape, but that his intention was to gratify an unnatural desire, which was not a crime, the court stated:

> "* * * As he did not have sexual intercourse with her, but did assult her, the question as to his intent was to be determined by all the circumstances and by the acts of defendant. * * * The intent of a person cannot be proven by direct and positive evidence. It is a question of fact to be proven, like any other fact, by acts, conduct, and circumstances. It was the peculiar province of the jury to find the intent."
>
> *People* vs. *Johnson,* 131 Cal. 511, 63 P. 842.

It would be unreasonable to believe that the intent of defendant could be determined if the circumstances and acts of the defendant could not be used in weighing the intent of the accused. Intent is within the private mind of the individual, except as expressed through his words and acts and the circumstances of the particular case.

The evidence provides the only means of determining intent, save the actual truth when spoken by the accused. In the case at hand, the jury determined the intent of the defendant to be consistent with the acts of the defendant, which, the jury concluded, was an attempt to steal the sheep. The conclusion of the jury, under proper instructions by the court, was sound and the evidence is sufficient to support the verdict of guilty. Examples of the sufficiency of the evidence are referred to below:

1. Commotion of sheep (R. 10, 22, 23).

2. Defendant was found to have entered the corral of another without permission (R. 11, 16, 24, 27, 37, 38, 42, 51, 52).

3. The sheep was lying near defendant, and was removed from the other sheep (R. 13, 15, 31).

4. Defendant had his hand around sheep's leg holding it down (R. 24, 27).

5. The sheep was at the end of several feet of drag marks (R. 14, 16, 20, 24).

6. Drag marks clearly visible (R. 14, 23, 39, 48, 50, 53, 54, 58).

7. The sheep had been dragged near gate in corral (R. 33, 34).

From these circumstances and the balance of the record, sufficient evidence was introduced upon which the jury could find the defendant guilty of attempt to commit grand larceny. The appellant argues that the evidence fails to show that defendant had any means of killing or asporting the sheep from the premises of the owner. Appellant states that it is unreasonable to believe a man would be so negligent as to fail to arrange a means of asporting the object of his crime.

This court is not required to discharge the appellant because there existed the possibility that he might fail to complete a greater crime than that of which he has been found guilty. On the contrary, had he succeeded in asporting the sheep, the jury would have found him guilty of the greater crime of grand larceny. The court will not knowingly serve the criminal and the court will not relieve the appellant because he miscalculated in his planning to commit grand larceny. It is not the obligation of the prosecution to prove that the defendant could have succeeded in committing grand larceny had he not been apprehended by the owner of the sheep.

POINT II

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT OF THE JURY.

The evidence was sufficient to support the verdict of the jury.

Appellant states that "a proper analysis of all testimony will also fail to show any motive to injure or benefit. Therefore, there is no crime committeed if the mind of the person is innocent." (Appellant's brief p. 18.)

The absence of intent to injure has no importance in determining the intent to steal, as is clearly pointed out in *Skeen* v. *Craig,* 31 Utah 20, 86 P. 487, 490:

> "The word 'intent' as used in Rev. Stat. 1898, Sec. 4068, providing that 'in every crime or public offense there must exist a joint operation of act and intent,' indicates an intent to commit and act or to do something which the law denounces as a crime, regardless of the motives the accused may have had for doing the wrong. 'The intent required is, not to break the law, but to do the wrong.'
>
> "If a man intends to do what he is conscious the law, which every one is conclusively presumed to know, forbids, there need be no other evil intent."

The intent to benefit one's self is not a necessary part of intent, as is said in *State* v. *Allen,* 56 Utah 37, 189 P. 84, wherein the court states:

> "In order to constitute the crime of larceny, it is not necessary to prove that the accused

intended to derive some benefit either to himself or for some other person from the theft."

There seems to be no conflict in the testimony of the witnesses for the State. It will be noted that both Mr. Hansen and Mr. Giraud, witnesses for the State, testified that Mr. Hansen was looking out of the corral and into the field when Mr. Giraud found the defendant holding the sheep (R. 11, 25). Mr. Giraud, however, did see defendant holding the sheep (R. 24) and the question of fact raised by denial of the defendant was a question for the jury. There was no testimony or evidence presented to the court to indicate that the defendant was prejudiced by hatred against him by police officers Williams and Frandsen, except testimony of defendant. In *State* v. *Peterson,* 110 Utah 413, 174 P. 2d 843, 845, a case involving the larceny of a heifer, the court, by Chief Justice Larson, states:

> "* * * The mere taking of personal property by another does not, of course, constitute larceny. The taking must be with felonious intent.
>
> "As a general rule, the question of whether the taking is felonious is a question for the jury. See State v. DuBoise, 64 Utah 433, 231 P. 625. An exception is where there is no legal warrant for the jury finding it to be felonious. State v. Morrell, 39 Utah 498, 118 P. 215; State v. Chynoweth, 41 Utah 354, 126 P. 302; State v. DuBois, supra.

> It is well settled by this court that when reasonable minds may differ and arrive at opposite conclusions, the finding of the jury must control. State v. Gurr, 40 Utah 162, 120 P. 209, 39 L.R.A. N.S. 320."

It is submitted that there was a question as to the intent of defendant upon which reasonable men could have differed. Under proper instructions by Judge Sevy, the jury considered the testimony of all witnesses for the State and for the defendant. The jury performed their duty in accordance with the law.

CONCLUSION

The judgment of the court below should be affirmed.

Respectfully submitted,

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